

REDACTED DECISION – DK# 15-059 RPD

**BY: GEORGE V.PIPER, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON OCTOBER 28, 2015
ISSUED ON DECEMBER 23, 2015**

SYNOPSIS

TAXATION

**WEST VIRGINIA OFFICE OF TAX APPEALS
HEARING PROCEDURES**

In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the Petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. §11-10A-10(e) (West 2010); W. Va. Code R §121-1-63.1 (2003).

TAXATION

PERSONAL INCOME TAX

WEST VIRGINIA ADJUSTED GROSS INCOME OF RESIDENT INDIVIDUAL

The statutory law of the State of West Virginia explicitly excludes from state income tax those pensions and annuities paid to the retired West Virginia police officers, West Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. *See* W. Va. Code Ann. § 11-21-12(c)(6) (West 2010).

TAXATION

MONONGALIA COUNTY CIRCUIT COURT

CASE LAW

A person who proves that he or she worked as a federal law enforcement officer, and did not qualify to receive social security benefits while working in that job, may exclude all of his or her federal retirement income from that job for purposes of the West Virginia personal income tax. *See Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (Monongalia County Cir. Ct. W. Va. 2000).

CODE OF FEDERAL REGULATIONS

FEDERAL LAW ENFORCEMENT OFFICER

DEFINITION

The Federal Office of Personnel Management has defined a federal law enforcement officer to mean an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. *See* 5 C.F.R. §831.902 (2011); *See also* 5 C.F.R. §§831.901 and 831.903 (2011).

WEST VIRGINIA OFFICE OF TAX APPEALS

CONCLUSION OF LAW

Petitioner has carried the burden of proof with respect to the issue of whether her former spouse, Mr. A, is entitled to the same treatment as the taxpayer in the *Dodson* ruling, in that it has been established as to his special retirement eligibility as a federal law enforcement officer

whose retirement system, being separate and apart from the social security retirement program, does not qualify him to receive social security benefits.

FINAL DECISION

On January 12, 2015, the Tax Account Administration Division of the West Virginia State Tax Commissioner's Office (hereafter Respondent), denied Petitioner's Schedule M modification on their 2013 personal income tax return. Thereafter, by certified mail, on February 23, 2015, Petitioners timely filed a Petition for Refund with this Tribunal, the West Virginia Office of Tax Appeals. *See* W. Va. Code Ann. §§11-10A-8(2) and 11-10A-9(a)-(b) (West 2010).

During the initial telephonic conference, the parties agreed that in lieu of an evidentiary hearing, the matter would be submitted for decision, based solely upon documents provided by the Petitioners.

FINDINGS OF FACT

1. Petitioner is the former spouse of Mr. A.
2. Mr. A served twenty-one (21) years as a criminal investigator with the Naval Criminal Investigation Service or NCIS before his retirement..
3. During his tenure as a criminal investigator, Petitioner's former spouse, performed duties commensurate within his job as a sworn federal law enforcement officer in that he was qualified to carry a firearm, during the conduct of criminal investigations.
4. Petitioner's spouse, while employed by the NCIS, did not pay social security taxes, and therefore, cannot receive social security benefits pursuant to his federal employment.
5. On July 30, 2015, this Tribunal ordered the parties to submit the amount of the tax refund applicable for tax year 2013. On July 30, 2015, and October 28, 2015, respectively, the

parties, in separate letters, stated that, if eligible, Petitioners refund amount should be the sum of \$_____. The parties are also in agreement that because Petitioner moved to West Virginia on May 24, 2013, she is entitled to only sixty (60) percent of her refund claim for that year which amounts to \$_____.

DISCUSSION

The sole issue for determination is, whether the Petitioner, as the former spouse¹ of Mr. A, who was a criminal investigator with the Naval Criminal Investigation Service who could not collect social security benefits, may exclude his retirement pension for West Virginia personal income tax purposes, pursuant to the holding in *Dodson v. Palmer*, Civil Action No. 00-C-AP (Monongalia County, WV, 2000).

The statutory law of the State of West Virginia explicitly excludes from state income tax those pensions and annuities paid to retired West Virginia police officers, West Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. *See* W. Va. Code Ann. §11-21-12(c)(6) (West 2010).

According to the ruling of the Circuit Court of Monongalia County, West Virginia, in *Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (2000), a person who proves that he or she worked as a federal “law enforcement officer,” and did not qualify to receive social security benefits while working in that job may exclude all of his or her federal retirement income from that job for purposes of the West Virginia personal income tax.

For purposes of establishing special retirement eligibility, the Federal Office of Personnel Management has defined a federal “law enforcement officer” to mean, “an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected or

¹ Under the Civil Service Retirement Handbook Section 74 A.1.2 spousal survivor benefits are payable upon the retiree’s death.

convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position.” *See* 5 C.F.R. §831.902 (2011); *See also* 5 C.F.R. §§831.901 and 831.903 (2011). The federal government has also distinguished such “law enforcement officers” from other civil service employees, including military personnel, in that the federal law enforcement officers’ retirement is calculated using an altogether different formula from the one used to calculate other federal civil service employees’ retirement benefits.

The documents, submitted by the Petitioner in this matter, showed that Mr. A was a criminal investigator with the NCIS, and that his duties were commensurate with his job as a federal law enforcement officer.

The retirement system, into which Petitioner’s former spouse contributed, is separate, and apart from the social security retirement insurance program and Petitioner’s spouse did not pay social security taxes while employed; therefore, cannot receive social security benefits.

Because Mr. A was a qualified federal law enforcement officer, his spouse is therefore entitled to exclude his law enforcement retirement benefits from West Virginia personal income tax pursuant to the ruling in *Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (2000).

CONCLUSIONS OF LAW

Based upon all the above, it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the Petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. §11-10A-10(e) (West 2010); W. Va. Code R § 121-1-63.1 (2003).

2. The statutory law of the State of West Virginia explicitly excludes from state income tax those pensions and annuities paid to the retired West Virginia police officers, West Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. *See* W. Va. Code Ann. §11-21-12(c)(6) (West 2010).

3. A person who proves that he or she worked as a federal law enforcement officer, and did not qualify to receive social security benefits while working in that job, may exclude all of his or her federal retirement income from that job for purposes of the West Virginia personal income tax. *See Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (Monongalia County Cir. Ct. W. Va. 2000).

4. The Federal Office of Personnel Management has defined a federal law enforcement officer to mean an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. *See* 5 C.F.R. §831.902 (2011); *See* also 5 C.F.R. §§ 831.901 and 831.903 (2011).

5. Petitioner has carried the burden of proof with respect to the issue of whether her former spouse is entitled to the same treatment as the taxpayer in the *Dodson* ruling, in that it has been established as to his retirement eligibility as a federal law enforcement officer whose retirement system, being separate and apart from the social security retirement program, does not qualify him to receive social security benefits.

DISPOSITION

WHEREFORE, it is the Final Decision of the West Virginia Office of Tax Appeals that Petitioners' petition for refund of West Virginia personal income tax for tax year 2013 is **GRANTED**, as revised in the amount of \$_____.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
George V. Piper
Administrative Law Judge

Date Entered